



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 174399

PRELIMINARY RECITALS

Pursuant to a petition filed on May 17, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on October 13, 2016, at Milwaukee, Wisconsin.

NOTE: This matter was originally schedule for hearing on June 14, 2016. The Petitioner asked to reschedule the hearing so he could obtain legal representation.

The matter was then rescheduled to June 21, 2016. The Petitioner did retain counsel and on July 15, 2016, [REDACTED] submitted a written request for an adjournment so he could prepare for the hearing.

There were some difficulties finding a mutually agreeable hearing date, but [REDACTED] indicated that his client was waiving all applicable time limit and confirmed this in writing, via e-mail on July 18, 2016. On July 19, 2016, a phone conference took place, at which time [REDACTED] and [REDACTED] agreed to October 13, 2016 as a hearing date.

As indicated above, the hearing took place on October 13, 2016, as scheduled. [REDACTED] again affirmed that his client was waiving all applicable time limits.

The issue for determination is whether the Racine County Department of Human Services (the agency) correctly determined that the Petitioner was overpaid FoodShare benefits in the amount of \$2,013.00 for the period of June 1, 2010 through May 31, 2011; \$1,052.00 for the period of June 1, 2011 through May 31, 2012; and \$1,447.00 for the period of August 14, 2012 through November 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Racine County Corporation Counsel
730 Wisconsin Ave., 10th Floor
Racine, WI 53403

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The primary person, who applied for the benefits in question is Petitioner's former mistress, hereinafter referred to as [REDACTED], CARES # [REDACTED]. (See Respondent's Exhibit T)
3. Between June 2010 and November 2012, [REDACTED] did not report the Petitioner in her household. (Stipulation of the Parties)
4. During this time, no one in the household was over age 60, blind, or receiving disability income. (Stipulation of the Parties)
5. During this time, [REDACTED] had one child from a previous relationship, in addition to three children in common with Petitioner. (Stipulation of the Parties; Respondent's Exhibit O)
6. The last child born to [REDACTED] and Petitioner, was born in May / June 2010. (Respondent's exhibit T)
7. Petitioner signed leases for two apartments with [REDACTED] on April 1, 2010, and on October 1, 2012. (Testimony of Petitioner; Respondent's Exhibits D and U)
8. [REDACTED] would not have been able to lease the second apartment without the Petitioner, due to her bad credit. (Testimony of the [REDACTED] Landlord; Testimony of Petitioner)
9. During the time in question, the Petitioner paid [REDACTED] child support for the three children. (Stipulation of the Parties)
10. On March 30, 2016, the agency sent the Petitioner three FoodShare Overpayment Notices:
 Claim [REDACTED], in the amount of \$2,013.00, for the period of June 1, 2010 to May 31, 2011
 Claim [REDACTED], in the amount of \$1,052.00, for the period of June 1, 2011 to May 31, 2012
 Claim [REDACTED], in the amount of \$1,447.00 for the period of August 14, 2012 to November 30, 2012.

The notices were sent to the Petitioner at an address on [REDACTED], which is the home the Petitioner owns with his wife.

(Exhibit O)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 17, 2016. (Petitioner's Exhibit G)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)* §7.3.1.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

7 CFR §273.18 (a)(4) states, The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (ii) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

This is reflected in section of 7.3.1.2 of the FoodShare Wisconsin Handbook, which indicates, “all adult or emancipated minors that were included in the food unit or should have been included in the food unit at the time of the overpayment occurred, are liable for repayment of the overissuance of FoodShare benefits...” (Wisconsin uses the term “food unit” in place of the Federal term “household”).

Under 7 CFR §273.1(b)(ii), persons under 22 years of age who live with their natural or adoptive parents must be considered part of the same household. *See in Accord, FSH §3.3.1.3*

It is the agency’s contention that the Petitioner was living with [REDACTED] and their three children between June 1, 2010 and November 30, 2012. The agency further contends that when Petitioner’s income is included in the household, that the household is over the income limit and therefore, not eligible for the benefits that [REDACTED] received for the household.

Petitioner’s attorney did not dispute the agency’s calculation of Petitioner’s earned income and [REDACTED]’s earned income, nor was there any dispute that the household would be over the income limit for benefits during the time in question, if their earned income was combined. However, Petitioner denies any liability for any overpayment of FoodShare benefits incurred by [REDACTED].

The agency contends that the Petitioner and [REDACTED] lived together at an address in Germantown from April 1, 2010 through October 1, 2012, and that from October 1, 2012 through November 30, 2012, he was living at an address in Waterford. The agency relies on leases signed by the Petitioner. However, there is also documentation that the Petitioner owned a home in Milwaukee with his wife, (again, [REDACTED] was Petitioner’s mistress, and is not his wife), during the time in question. (See Petitioner’s Exhibits A and B)

The Petitioner does not dispute the fact that he signed the lease with [REDACTED] for the apartment in Germantown (Respondent’s Exhibit U), but asserts that he only did so, to make sure that his kids had a nice place to live and because he was concerned that [REDACTED] would not be able to obtain the leases without him. The Petitioner’s testimony regarding where he was actually living was a bit confusing to say the least, but indicated that he would sometimes stay with his wife in Milwaukee, in the home they have owned since 2005, but due to his extramarital activities with [REDACTED], there was some estrangement; he would stay with [REDACTED] for short periods, until they had a falling out, and then he would stay with his brother, or with his friends [REDACTED] (who is [REDACTED]’s ex-husband). [REDACTED] offered testimony corroborating Petitioner’s claim.

The landlord for the Germantown apartment testified that he did not check on the property very often and could not say whether the Petitioner was really living there. The agency has provided no other evidence to establish where the Petitioner was living between June 2010 through October 1, 2012.

For the Period of October 1, 2012 through November 30, 2012, the agency again produced a lease signed by the Petitioner and [REDACTED] for the apartment in Waterford. The Petitioner again testified that he signed the lease, because he did not think [REDACTED] would be able to get the apartment without his assistance.

The landlord for the Waterford apartment testified that he would not have rented the apartment to [REDACTED] alone, because he conducted a credit check and her credit was very poor. The landlord also testified that he did not go to his property in Waterford often, and could not say whether the Petitioner was really living there. The landlord testified that the Petitioner called him to see if he could break the lease, but could not recall when that was.

The agency provided police reports and testimony from the reporting officers regarding contacts they had with the Petitioner at the Waterford address. However, those encounters all took place between 2013 2015, outside the overpayment period.

I do note that the police report in Respondent's Exhibit F, dated May 2013, indicates that [REDACTED] told police that the Petitioner and she had been living together on and off for three years, but it is unclear from the record what that means. [REDACTED] was not subpoenaed to the hearing to testify, and her statement can be interpreted to support the Petitioner's contention that he moved around between residences.

The agency has provided no other evidence to show that the Respondent was actually living at the Waterford apartment with [REDACTED] in the months of October 2012 and November 2012.

I note that the parties stipulated to the fact that the Petitioner was paying child support to [REDACTED] during the time in question, which begs the question of why he would do that, if he was living with [REDACTED].

In the absence of other corroborating evidence, such as testimony from neighbors, voter registration information, driver's license information, department of transportation vehicle registration information, tax return / department of revenue information, Petitioner's facebook posts, etc, to further corroborate the claim that the Petitioner was living with [REDACTED], it is found that the agency has not met its burden to prove the Respondent was living with [REDACTED] between June 1, 2010 and November 30, 2012. As such, it cannot prove that an overpayment of benefits occurred, nor that the Petitioner is a liable party.

CONCLUSIONS OF LAW

The agency has not met its burden to prove that it correctly determined the Petitioner was overpaid FoodShare benefits in the amount of \$2,013.00 for the period of June 1, 2010 through May 31, 2011; \$1,052.00 for the period of June 1, 2011 through May 31, 2012; and \$1,447.00 for the period of August 14, 2012 through November 31, 2012.

THEREFORE, it is

ORDERED

That within ten days of this decision, the agency remove the Petitioner as a liable party from overpayment claims [REDACTED], [REDACTED], and claim [REDACTED].

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of October, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 19, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability

